

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
DEPUTY

NO. 53116-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

WESTON G. MILLER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable Andrew J. Toynbee, Judge

STATEMENT OF ADDITIONAL GROUNDS

WESTON G. MILLER, PRO SE
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001

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I.

ASSIGNMENT OF ERROR

1. The trial court erred in treating Miller's motion as a public disclosure request.
2. The WSBA suggest that all files should be given to the client at the conclusion of representation or retained for 7 years after date of acquittal or length of incarceration.
3. Miller has a constitutional right to his property and to be given a reasonable notice of the intent to destroy his property which required notice and/or informed consent.

II.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Whether the trial court erred in treating Miller's motion as a public disclosure request?
2. Whether the trial court erred in their interpretation of the RPCs and CrR 4.7(h)(3)?
3. Whether Enbody violated the RPCs and CrR 4.7(h)(3), by deceiving Miller into thinking that Enbody destroyed Miller's entire file, by withholding what wasn't destroyed, and by actually destroying most of Miller's property without notice and/or informed consent?
4. Whether Miller has a constitutional right to his property?
5. Whether procedural due process requires notice and/or informed consent before an attorney destroys a client's property?

III.

STATEMENT OF THE CASE

Lewis County Superior Court appointed attorney Joseph P. Enbody to represent Miller during trial, sentencing, and including the filing of a notice of appeal in his behalf. Miller was convicted of first degree murder and sentenced to 30 years on June 5, 2013.

The Court of Appeals Division Two denied Miller's direct appeal on January 5, 2015, and issued the mandate on January 16, 2015, under cause No. 44966-8-II. **Exhibit 1.** Miller was represented by Lise Ellner during these proceedings.

Shortly thereafter, Miller made multiple attempts to acquire his client file and discovery related materials from his trial counsel J. P. Enbody, but was stonewalled every time. The request for Miller's files started in March of 2015 and continued into May of 2015. Enbody stated in these letters that he "do[es] not store these materials after the case has been completed for a period of time"; he "do[es] not keep the discovery materials after the case has been completed"; and he "do[es] not have storage capability for every criminal case once it has been completed."

In reply to the letter dated May 10, 2015, Enbody erroneously directed Miller to CrR 4.7(h)(3) concerning custody of discovery materials. Contrary to Miller's letters, Enbody stated that "the discovery materials in a criminal case do not belong to [Miller]. By this time in

[Enbody's] career [he] would need a warehouse to contain all of the discovery materials that [he has] ever received in any criminal case". Then again, reiterated to Miller that he no longer had the discovery materials. "They were destroyed after [Enbody's] representation had ended". See **Exhibit 2, Appendix A.**

On October 18, 2018, Miller filed a grievance against J. P. Enbody and the Washington State Bar Association dismissed his grievance due to there being no judicial finding of impropriety. **Exhibit 2.** With the WSBA dismissal dated November 2, 2018, the Bar attached a copy of the WSBA Advisory Opinion 2211. **Exhibit 3.**

On December 4, 2018, Miller filed a motion to compel production of his client file and discovery materials in the Lewis County Superior Court. On February 13, 2019, Miller was present telephonically before Judge Andrew Toynbee. **Exhibit 4.** The court denied Miller's motion to compel J.P. Enbody to hand over all portions of the file, which is no longer complete. **Exhibit 5.**

Not only was Judge Toynbee very hostile toward Miller during this hearing. RP 4-5. It also appears that he was not familiar the WSBA Advisory Opinion 2211 that Miller attached as Appendix D, citing to the RPC's and CrR 4.7(h), or even the case law that Miller provided as his authority. This was evident when Miller stated:

And Mr. Enbody was supposed to have given me this file back in 2015 when I was trying to write my PRP.

THE COURT: Did you ask him back in 2015?

MR. MILLER: The motion that--I got attached many, many letters from him saying that he refused to give it to me and he destroyed it.

THE COURT: And his conclusion of the case is when he filed the notice of appeal on your behalf, and that was June 6, 2013, so almost two years later you asked him for the first time to give you these documents. And the RPCs do not require him to keep everything in a file forever. So once again, I'm denying the motion to compel.

MR. MILLER: Well, the RPC states that he is supposed to at least hang onto it for seven years. I mean--

THE COURT: I'm not--

MR. MILLER: -- he says he destroyed it right upon the termination of his representation. But the RPC states that he is supposed to -- upon termination, he is supposed to take steps to protect my files, my interests to be able to do that.

THE COURT: It says take steps reasonably necessary or reasonably practicable so--

MR. MILLER: Yeah --

THE COURT: -- once again, Mr. Miller --

MR. MILLER: If he's going to destroy it, he's got to let me know that he's going to destroy it so I can get a hold of it before he destroys it.

THE COURT: All right. Mr. Miller, I've denied your motion and that is the end of this hearing. RP 5-6.

Miller went into this hearing with full intent to acquire his client file and discovery related materials and/or written findings of fact and conclusions of law showing that either Enbody lied to Miller as it shows in the record. RP 3. Or findings of fact and conclusions of law showing that Enbody actually destroyed Miller's property. Either way, Miller did not receive his client

file and discovery related materials or even the portions thereof, that Enbody stated that he withheld. RP at 3.

Even though Miller asked the court more than once during this hearing. He has to date, not received any findings of fact and conclusions of law from Lewis County Superior Court. Nor, is it in the court file for this Court to review. RP 2, 6.

IV. STATEMENT OF ADDITIONAL GROUNDS

Ground One: The trial court abused its discretion by basing its decision upon untenable grounds, and thereby, denied Miller the constitutional right to his property. U.S. Const. Amend. 14; and Wash. Const. art. 1 § 3.

Judge Toynbee denied Miller's motion based upon two untenable grounds or reasons:

(1) "That is not a proper use of either the discovery rules or enforcement of the rules of professional conduct, and arguably not proper use of the Freedom of Information Act and Washington's version of it. So I also don't believe that it's a basis for compelling Mr. Enbody to provide incomplete documents, so I'm denying the motion to compel." RP at 5.

(2) "And the RPCs do not require him to keep everything in a file forever. So once again, I'm denying the motion to compel." RP at 5-6.

Miller's letters to Enbody, and his motion to compel had nothing to do with the Freedom Of Information Act or a Washington's Public Records Act request, and everything to do with Enbody's actions under CrR 4.7(h)(3) and the RPCs.

Under the combined force of CrR 4.7(h)(3) and RPC 1.16(d), some sort of disclosure must be made when a criminal defendant request copies of his client file and

related discovery materials. But that is the only similarities. CrR 4.7(h)(3) and RPC 1.16(d) does require disclosure, but unlike a public disclosure request, no showing of need is required. State v. Padgett, 4 Wn.App.2d 851, 424 P.3d 1235, 1237 (2018). And the ends of justice are best served by a timely disclosure of a client file to an individual investigating the possibility of postconviction relief through a PRP. Id.

Generally, a trial court's discovery rulings under CrR 4.7 will not be disturbed absent a manifest abuse of discretion. State v. Garcia-Salgado, 170 Wn.2d 176, 183, 240 P.3d 153 (2010). A trial court abuses its discretion when its decision "is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons". State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993).

"A decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supporting facts, adopts a view 'that no reasonable person would take', and arrives at a decision 'outside the range of acceptable choices'". Id. (citation omitted)(quoting State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990); State v. Rundquist, 79 Wn.App. 786, 793, 905 P.2d 922 (1995)).

"A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rest on facts unsupported in

the record or was reached by applying the wrong legal standard". State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting Rundquist, 79 Wn.App. at 793).

A. RPC 1.4, 1.15A(c)(3), 1.16(d), and 3.4(a)(c) governed Miller's motion and required Enbody and the court to comply with CrR 4.7(h)(3).

Once Miller initially made the request for production of his client file and discovery materials. Enbody then, was obligated to produce what property he had of Miller's. This property generally includes the client's file and discovery related documents. See Exhibit 3 (WSBA Opinion 2211 (2011)(citing WSBA Opinions 2117 (2006); 1969 (2002); and 181 (1987))).

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, and surrendering papers and property to which the client is entitled. See RPC 1.16(d), and RPC 1.4.

The word "shall" in this RPC, imposes a mandatory requirement unless a contrary intent is apparent. State v. Gonzales, 198 Wn.App. 151, 155, 392 P.3d 1158 (2017). The word "reasonably" in this RPC, denotes the conduct of a reasonably prudent and competent lawyer. RPC 1.0A(h).

The lawyer's responsibilities in this matter rest chiefly upon RPC 1.15A(c)(3). Wherein, it states that a lawyer must appropriately safeguard any property of clients. The word "must" means "is required...to" and

places a mandatory duty on the subject of the clause. Webster's Third International Dictionary, 1492 (2002); Ohio Sec. Ins. Co. v. AXIS Ins. Co., 190 Wn.2d 348, 353, 413 P.3d 1028 (2018).

Instead, Enbody deceived his client by stating that he destroyed Miller's property. See **Exhibit 2, Appendix A** (Letters from Enbody); and RP at 3. Also see RPC 8.4(a),(c),(d). Therefore, Enbody failed to follow the RPCs and CrR 4.7(h)(3). Then the court failed to compel Enbody to relinquish what wasn't destroyed based upon applying the wrong legal standards.

B. Although the RPCs do not require an attorney to keep a client's file forever, the Washington State Bar Association does provide a table of dates for file retention.

In Washington most, if not all, of the file is the property of the client unless a different understanding is reached with the client. See WSBA Opinion 181. In any event, the WSBA strongly suggest that all files should be given to the client at the conclusion of representation unless the client ask that the files be shredded. See **Exhibit 6** (WSBA's Guide To Best Practices For Client File Retention And Management).

Ultimately, the RPCs do not require Enbody to keep Miller's file forever as the court stated above. But the WSBA does suggest that all criminal files should be retained for "7 years after date of acquittal or length of incarceration". Id. at 11 (Table of Dates for File

Retention). Therein, Enbody's actions and the court's ruling does not correspond with the Washington State Bar Association's opinion.

Enbody did not follow the RPCs or the court rules for Miller's disclosure for his property. In fact, Enbody never even gave Miller a chance to get his property. Because Enbody destroyed it immediately upon the termination of representation while Miller was still in transit to prison. There is no excuse fathomable to justify Enbody destroying Miller's only avenue for presenting a viable PRP.

C. Miller had a procedural constitutional due process right to be informed before his property was destroyed pursuant to U.S. Const. Amend. 14; and Wash. Const. art. 1 § 3.

RAP 2.5(a) states that this Court "may refuse to review any claim of error which was not raised [at the trial court level]"; however, a party may raise "manifest error affecting a constitutional right" for the first time on appeal. RAP 2.5(a). The Supreme Court has also applied RAP 2.5(a) in attorney discipline cases. In re Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 764, 801 P.2d 962 (1990)("Conduct prejudicial to the administration of justice (RPC 8.4(d)), for purposes of attorney discipline, refers only to conduct which violates accepted norms of practice; i.e., conduct in an official or advocacy role or conduct physically interfering with the enforcement of the law.").

Undeniably, Enbody is the one who filed an in forma

pauperis and notice of appeal on Miller's behalf, so he knew that there would be more work to do in this case. So when a reasonably prudent and competent lawyer ascertains the benefits of acquiring back 1'square foot of storage space that Miller's file occupied by destroying it, or minimizing it by transferring everything onto electronic format. Verses violating Miller's constitutional rights to his property. There came a point were Enbody had to have realized that destroying Miller's file, after he had just been given a 30 year sentence. Would unquestionably, prejudice Miller's afforded right to present matters outside the record through a personal restraint petition.

What Miller needed, was his attorney to take steps to the extent reasonably practicable to protect his interest, such as giving Miller a reasonable notice of the intent to destroy the only avenue for presenting facts and materials outside the record. RPC 1.4; RPC 1.16(d); and RPC 3.4(a).

Ultimately, a PRP is Miller's only avenue for presenting facts and materials outside of the record. State v. McFarland, 127 Wn.2d 322, 355, 899 P.2d 1251. By denying Miller access to his client file and related discovery materials, Enbody intentionally deprived Miller of a critical resource for completing a viable personal restraint petition. State v. Padgett, 424 P.3d at 1237 (2018).

The Fourteenth Amendment of the United States

Constitution states that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. 14. The Washington Constitution is similar wherein, it states that no person shall be deprived of life, liberty, or property, without due process of law. Wash. Const. art. 1 § 3.

The constitutional procedural due process is not a fixed standard, but a relative concept changing in form case by case, providing that process of law which is due in each circumstance. At a minimum, procedural due process must include notice reasonably calculated to apprise a party of the pendency of proceedings affecting him, and an opportunity to be heard at a reasonable time and effective manner. These due process protections not only attach to a permanent deprivation but also the present temporary nonfinal deprivation of property. Reilly v. State, 18 Wn.App. 245, 250, 566 P.2d 1283 (1977).

This procedural due process right to one's client file and discovery materials is crucial. Especially, since the right to discovery is an integral part of the right to access the courts embedded in our constitution. Lowy v. PeaceHealth, 174 Wn.2d 769, 776-77, 280 P.3d 1078 (2012)(citing John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 780-81, 819 P.2d 370 (1991)).

Under the Rules of Professional Conduct, counsel has a

duty of communication with the defendant. RPC 1.4. An attorney must "inform the client of any circumstance requiring the client's consent, reasonably consult with the client regarding the means by which the client's objectives will be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with any request for information". In re Disciplinary Proceeding Against Van Camp, 171 Wn.2d 781, 803, 257 P.3d 599 (2011).

In addition to RPC 1.4 that requires informed consent before destroying a clients property. RPC 3.4(a) states that a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. Hence, by Enbody destroying Miller's client file and discovery materials immediately after his representation had ended without informed consent violated Miller's procedural due process rights to his property.

Therein, procedural due process required Enbody to promptly inform Miller of the decision to destroy his property which required informed consent before destruction. RPC 1.4. Enbody knew that Miller needed this file and was aware of the means by which his objectives were to be accomplished because he filed the in forma pauperis and notice of appeal on his behalf.

If one is familiar with CrR 4.7(h)(3) and the RPCs, as would a licensed attorney. The attorney knows where their

obligations lie. With this experience, Enbody knew that destroying Miller's property would come the associated risks and being held accountable for his actions. RPC 8.4.

Miller also had the right to have the court compel Enbody to produce his property and he has a right to findings of facts and conclusions of law. Because the question of whether an attorney's conduct violates the relevant Rules of Professional Conduct is a question of law for the court to determine. Eriks v. Denver, 118 Wn.2d 451, 457-58, 824 P.2d 1207 (1992).

Therefore, this complete disregard of the RPCs, ultimately, violated Miller's constitutional rights to his property. Wash. Const. art. 1 § 3. Then the trial court, denied Miller the due process of that right by denying his motion in full upon untenable grounds.

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V.

CONCLUSION

The court's ruling in this matter is erroneous and based upon untenable grounds and reasons. Miller has a constitutional right to his property, even too what wasn't destroyed. The complete denial of Miller's rights to his property is a manifest error affecting his constitutional rights. Due process also requires the trial court to enter findings of fact and conclusions of law because violations of the RPCs is a question of law for the court to determine.

Reversal in this matter is warranted, and remand is necessary for further proceedings.

RESPECTFULLY submitted on November 26, 2019.

A handwritten signature in black ink, appearing to read 'W. G. Miller', is written over a horizontal line.

Weston G. Miller; pro se; DOC# 366767
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001-2049

EXHIBIT - 1

EXHIBIT - 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

WESTON GARRETT MILLER,
Appellant.

No. 44966-8-II

MANDATE

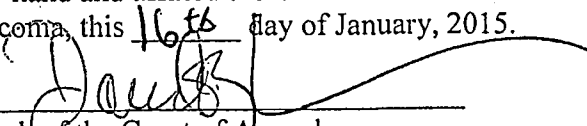
Lewis County Cause No.
12-1-00145-1

The State of Washington to: The Superior Court of the State of Washington
in and for Lewis County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on December 2, 2014 became the decision terminating review of this court of the above entitled case on January 5, 2015. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount.

Judgment Creditor: State of Washington \$80.00
Judgment Creditor: AIDF \$3986.72
Judgment Debtor: Weston Garrett Miller \$4066.72

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 16th day of January, 2015.


Clerk of the Court of Appeals,
State of Washington, Div. II



Sara I Beigh
Lewis County Prosecutors Office
345 W Main St Fl 2
Chehalis, WA 98532-4802

Lise Ellner
Attorney at Law
PO Box 2711
Vashon, WA 98070-2711

EXHIBIT - 2

WASHINGTON STATE BAR ASSOCIATION
GRIEVANCE AGAINST A LAWYER

Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Ave., Ste 600
Seattle, WA 98101-2539

Grievance Against: Joseph Paul Enbody
 Attorney at Law
 107 South Tower; P.O. Box 855
 Centralia, WA 98531
 (360) 736-8269
 WSBA# 1796

RE: State v. Weston Garrett Miller; Lewis County Superior Court
Cause No. 12-1-00145-1.

This is a formal grievance against Joseph Paul Enbody:

I wrote to Enbody many times in attempts to obtain my client file and discovery from him so that I could adequately challenge my current First Degree Murder conviction through a collateral attack. The responses from him stated: 1) He doesn't store these materials; I should get them through the Freedom of Information Act. 2) He doesn't keep the discovery materials after a case has been completed because he doesn't have the storage capability. Plus, his discovery materials are not even totally complete and some materials are not even kept anyway. He prefers that the prosecutor maintains these records rather than him. 3) The discovery materials in my criminal case do not belong to me. He would need a warehouse to contain all the discovery materials that he has ever received in every criminal case. He no longer has my client file, it was destroyed after his representation had ended. See Appendix A.

Since then, I have filed a PRP on the grounds of ineffective trial counsel, ineffective appellate counsel due to counsel failing to perfect the trial record for appeal, and prosecutorial misconduct. In re Pers. Restraint of Miller, COA# 48200-2-II; SUP# 94127-1. Because my issues revolved around a inadequate record and ineffective counsel(s), I contacted Enbody again in an attempt to amend and/or recreate the trial record with an affidavit or declaration from him. Again, he wouldn't and/or couldn't help me with the inadequate trial record because he destroyed my case file with his notes and stated that he remembered very little, if anything at all from my trial. See Appendix B.

Because of Enbody's ineffective actions as my attorney, bad faith, and just plain negligence, I was forced to purchase the prosecution's one sided file. Immediately upon reviewing this file, I discovered many discrepancies.

Including the fact that the prosecutor in my case, Bradley Meagher, offered me a plea deal of 306 months. This offer was never presented to me by Enbody. Nor did he ever explain to me how significant an offer of 15% off the entire 360 month sentence for first degree murder would be. Compared to the 360 months I received anyway without any time off the first 25 years and only 10% off the last 5 years for going to trial. This was in fact an exceptionally lenient offer by the State that I would have taken given the circumstances. See Appendix C.

In conclusion, Enbody neglected me as a client and completely failed to retain my client file for at least 7 years as required pursuant to RPC 1.15. It shows bad faith on his behalf by not hanging onto my file for even the minimum amount of time in order for appellate counsel to file an adequate direct appeal and my one year for collateral attack pursuant to CrR 4.7(h)(3); RPC 1.16(d); RCW 10.73.90, and 10.73.100. Because of his actions I have no possible way to prove any Brady violations, ineffective assistance of counsel(s) issues, or any discrepancies in the record because all I have is the State's version of events. At this point, it's as if I had no trial counsel at all. Enbody completely denied me all rights to due process and any chance at a fair trial and appeal.

I affirm that the information I am providing is true and accurate to the best of my knowledge. I have read Lawyer Discipline in Washington and I understand that all information that I submit can be disclosed to the lawyer I am complaining about and others.



Dated: October 18, 2018.

Weston G. Miller; DOC# 366767
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001-2049

A P P E N D I X - A

March 26, 2015

Joseph P. Enbody
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: State v. Miller, Lewis County Superior Court No. 12-1-00145-1;
Request for Discovery and Case-Related Materials.

Mr. Enbody:

Please, send me a copy of my discovery and case related materials (client file) that you acquired through your involvement in the above referenced case. Including all court documents filed by you and the prosecutor during pretrial hearings and throughout trial. I also need a copy of the prosecutor's edited/alterd version played of Ex.19 shown to the jury. Along with a copy of the State's power-point presentation.

Thank you for your time and attention to this matter.

Sincerely,



Weston G. Miller, DOC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

c: file

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

April 1, 2015

Mr. Weston G. Miller, DOC #366767 AA04
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

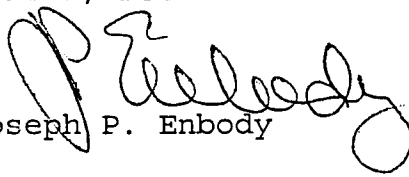
RE: State of Washington v. Weston Miller
Lewis County Superior Court Cause No. 12-1-00145-1

Dear Mr. Miller:


I am in receipt of your most recent correspondence concerning the court documents and the discovery materials that were provided to us earlier on in this case. However, I do not store these materials after the case has been completed for a period of time. I think you could probably request those documents through the Freedom of Information Act. You should address the court records through the Lewis County Superior Court Clerk's Office. Their address is 345 West Main Street, MS:CLK01, Chehalis, WA 98532. The police reports and discovery materials would be requested through the Lewis County Prosecutor's Office at 345 West Main Street, MS:PRO01, Chehalis, WA 98532. I am hoping that the information you obtain will help you with either a new trial or some other more beneficial result.

Very truly yours,

ENBODY, DUGAW & ENBODY


Joseph P. Enbody

JPE/lm

*Hope all goes
well for you*


April 27, 2015

Joseph P. Enbody,
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: State v. Miller, Lewis County Superior Court No.12-1-00145-1;
Request for Discovery and Case Related Materials.

Dear Mr. Enbody:

I am writing to ask that you send me a copy of all the discovery and case related materials (client file) you acquired through your involvement in the above referenced case.

I am currently attempting to prepare and submit a personal restraint petition challenging my current convictions. However, this will not be possible unless you provide me with a complete copy of the above requested materials. I am indigent and have no way of acquiring the records unless you provide them to me.

I am sure that you are already aware that pursuant to RPC 1.16(d) and the Washington State Bar Association's Formal Ethics Advisory Opinion 181: a lawyer shall take steps necessary to protect a client's interests by surrendering all papers to the client; and the file generated in the course of representation must be turned over to the client at the clients request. Additionally, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions... CrR 4.7(h)(3).

I know that I can ask for help from the Washington State Bar Association, but I would prefer to resolve this with you directly.

I am proceeding pro se and under the time constraints of RCW 10.73.090; therefore, your prompt action and response are requested. Please mail all the requested materials to me at the address below as soon as possible.

Thank you for your time and attention to this matter.

Sincerely,



Weston G Miller, DDC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

c: File

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

April 30, 2015

Mr. Weston Miller, DOC #366767 AA04
Clallam Bay Corrections Center
1330 Eagle Crest Way
Clallam Bay, WA 98326

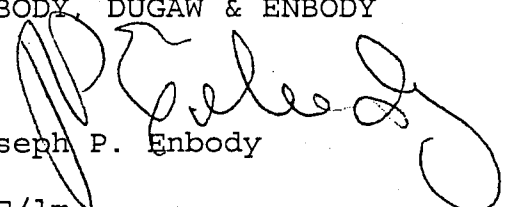
RE: State of Washington v. Weston Miller
Lewis County Superior Court Cause No. 12-1-00145-1

Dear Mr. Miller:

I am in receipt of your letter of April 27, 2015 and as I indicated to you before, I am not in a position to provide the materials you have requested because I do not keep the discovery materials after a case has been completed. The materials in your case were quite voluminous and I, quite frankly, do not have storage capability for every criminal case once it has been completed. Additionally, I have found over time that my discovery materials are not always totally complete and some materials that may have come my way that were not related to the case other than on a very incidental basis and were not germane to the case are not kept anyway. To make a long story short, I cannot provide these materials because I no longer have them. As per my earlier discussion, I am sure the Prosecutor maintains those records and I have found it best that he keep them after a case is closed rather than me. In any event, my suggestion would be that you contact the Prosecutor as I simply do not have the materials you are requesting.

Very truly yours,

ENBODY, DUGAW & ENBODY



Joseph P. Enbody

JPE/lm

May 10, 2015

Joseph P. Enbody,
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: State v. Miller, Lewis County Superior Court No.12-1-00145-1;
Request for Discovery and Case Related Materials.

Dear Mr. Enbody:

I am in receipt of your letter, dated April 30, 2015, concerning my request for a copy of all the case-related materials you acquired through your involvement in the above referenced cause number.

You are claiming that you no longer have the materials I am requesting, and you have suggested that I request the materials from the Prosecutor's Office. I believe you have misinterpreted your duties to me as your client under the Rules of Professional Conduct. The client file and case-related materials you acquired through your involvement belong to me. Prior to your getting rid of the materials, you should have contacted me and asked me what I wanted you to do with my property. You are not authorized to dispose of my property without my permission.

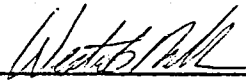
Regarding your suggestion that I contact the Prosecutor's Office and request a copy of their file from them, I have already done that. They have responded treating my request as a public records request, and require a substantial amount of money for the records. As I have previously told you, I am indigent and cannot afford to pay anything. Plus, records provided pursuant to RCW 46.56. et seq, are subject to a substantially larger amount of redactions than are allowed under CrR 4.7. Also, the Prosecutor's file does not have any of the materials provided to you by the Private Investigator, Jim Armstrong, hired on my behalf in this case.

As you pointed out in your letter, discovery materials that are provided to you are not always complete. Perhaps the prosecution withheld evidence from you in discovery, or maybe law enforcement failed to turn over material exculpatory evidence to the prosecution. I would have no way of uncovering these or other potentially conviction-invalidating issues if the records from this case are allowed to be concealed by you, the prosecution, or law enforcement.

Again, I ask that you do whatever it takes to provide me with a complete copy of all the case-related materials you acquired through your involvement in this case. If you no longer have them, then, I suggest that you go to the Prosecutor's Office, acquire a complete copy of their file, and provide it to me. After all, the requested materials belong to me and you should not have gotten rid of them without my permission. Therefore, it is only fair that you bear the burden of replacing them.

Thank you for your time and attention to this matter. I look forward to your, timely, formal response.

Sincerely,


Weston G Miller, DOC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

c: File

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

May 14, 2015

Mr. Weston Miller, DOC #366767 AA04
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

RE: State of Washington v. Weston Miller
Lewis County Superior Court Cause No. 12-1-00145-1

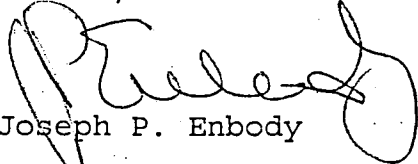
Dear Mr. Miller:

I once again read your May 10, 2015 correspondence and in reply I thought I would direct you to Criminal Rule 4.7 concerning custody of discovery materials. As you can see, contrary to your letter, the discovery materials in a criminal case do not belong to you. By this time in my career I would need a warehouse to contain all of the discovery materials that I have ever received in any criminal case. So I would once again reiterate to you I no longer have the discovery materials. They were destroyed after my representation had ended. As to the materials provided by the private investigator, Jim Armstrong, you should feel free to contact him directly although I believe that most of my communications with him were verbal and not in writing, but perhaps he has maintained some records. His mailing address is:

Mr. Jim Armstrong
c/o Dana Williams Law Group, P.S.
57 West Main Street Ste. 200
Chehalis, WA 98532

Very truly yours,

ENBODY, DUGAW & ENBODY



Joseph P. Enbody

JPE/lm

or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iv).

(2) *Informants.* Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) *Medical and Scientific Reports.* Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

(h) *Regulation of Discovery.*

(1) *Investigations Not to Be Impeded.* Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Continuing Duty to Disclose.* If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of Materials.* Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.

(4) *Protective Orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Excision.* When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the

records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In Camera Proceedings.* Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions.*

(i) if at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

[Amended effective September 1, 1986; September 1, 2005; September 1, 2007.]

Comment

Supersedes RCW 10.37.030, .033; RCW 10.46.030 in part.

RULE 4.8 SUBPOENAS

Subpoenas shall be issued in the same manner as in civil actions.

Comment

Supersedes RCW 10.46.030 in part; RCW 10.46.050.

**RULE 4.9 PRETRIAL CONFERENCE
[RESCINDED]**

[Rescinded effective September 1, 1983.]

RULE 4.10 MATERIAL WITNESS

(a) *Warrant.* On motion of the prosecuting attorney or the defendant, the court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that

(1) The witness has refused to submit to a deposition ordered by the court pursuant to rule 4.6; or

(2) The witness has refused to obey a lawfully issued subpoena; or

(3) It may become impracticable to secure the presence of the witness by subpoena.

Unless otherwise ordered by the court, the warrant shall be executed and returned as in rule 2.2.

A P P E N D I X - B

May 5, 2016

Joseph P. Enbody
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: Washington State v. Weston Garrett Miller,
Lewis County Superior Court No. 12-1-00145-1;

REQUEST FOR DECLARATION

Dear Mr. Enbody,

I am writing to inquire if you would be willing to write me a declaration to help me correct the record for appeal. I need this declaration from you because no transcript of Exhibit 19 (Statements I gave the Centralia Police Department) was admitted or marked as identification during trial. Mr. Meagher admitted in a declaration that he should have marked for identification a copy of the transcript and noted on the record the time stamp on the recording for when he started and stopped playing the recording for the jury. (Appendix A) The record of proceedings is also blank due to the fact that the court recorder failed to transcribe the proceedings during the playing of Exhibit 19. Therefore, the record is inadequate for appeal.

On May 9, 2013, the fourth day of a five day trial, Det. Rick Hughes was called to the stand for direct examination. Rp pp.484. Bradley Meagher was trying to get in testimony about a "21 foot rule". We objected; and you gave our argument. Judge Richard Brosey, ruled in our favor and would not allow any mention of this "21 foot rule" to the jury. Rp pp.485-500 While Det. Hughes was on the stand, Mr. Meagher introduced Exhibit 19. He explained that he was only playing selected portions of the DVD to the jury and we agreed. It was a four part segment that went for two hours. Rp pp.512-521. (Appendix B)

In a letter to you dated April 26, 2013, Mr. Meagher states that the last segment that was planned to be played was to end on page 91, line 24 or at 1:27:10 depending on if you were looking at the transcript or the video. (Appendix C) But as you should be able to recall, the DVD was played longer than it was supposed to be played. In fact I remember informing you that Mr. Meagher needed to stop the video because it was

past what we agreed to play. I can not remember your exact words to him, but he stopped the video and apologized for not paying attention. The last thing I remember seeing on the screen was Det. Hughes and Officer Buster having me stand up, them lifting up my sweat shirt, then telling me to have a seat. According to the transcripts of Exhibit 19, the last image I remember seeing on the screen, was in fact on page 93, line 6, not page 91, line 24. (Appendix D)

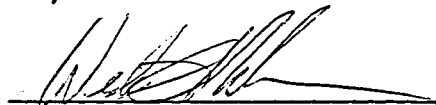
I asked you after Mr. Meagher stopped the video; shouldn't we object to him playing more than what we agreed? You told me that it doesn't really matter now, the damage is done, the jury already heard it, and objecting to it now would only bring more attention to the "21 foot rule".

The record of proceedings only shows (WHEREUPON THE VIDEOTAPE WAS PLAYED). There is nothing in the record as to what was played, only that there were four segments played.

I'm asking this declaration from you only to correct the record. I am sure that you might not remember when exactly the video stopped. But, I'm sure that you will remember that it was played longer than expected. Especially, since you had to tell Mr. Meagher to stop the video.

This declaration from you is the only way I know how to correct the record for appeal in the higher courts. I understand that this request is quite substantial. I included everything so you can review it in context if needed to help refresh your memory. A declaration from you stating that you did in fact have to inform Mr. Meagher to stop the DVD of Exhibit 19, because he went past what was agreed to be played, and or if you do agree with my recollections of events, that also would be extremely helpful to my case. As you may already know I am under time constraints and your immediate attention to this matter will be greatly appreciated.

Truely Yours,



Weston G. Miller DOC# 366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA, 98326

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

May 10, 2016

Mr. Weston G. Miller, DOC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

RE: State of Washington v. Weston G. Miller
Lewis County Cause No. 12-1-00145-1

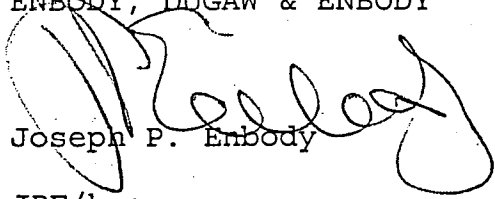
Dear Mr. Miller:

I have received your letter dated May 5, 2016 and reviewed that and the exhibits, including Mr. Meagher's declaration of April 11th, the transcript in Appendix B, the April 26, 2013 letter to me from Mr. Meagher in Exhibit C, and of course I also reviewed the transcript in Exhibit D. At the outset I would do anything that I could to be of help to you in your appeal. However, so much time has passed my recollection is certainly not as good as yours and I remember very little, if anything, at this point from the trial. I've had so many trials and court cases subsequent to yours over the last three years or so that I am hoping you can understand why my memory isn't as keen as yours. I have no reason to doubt your recollection of those events in your letter, but I don't have any independent knowledge or memory of them even after reviewing the materials that you submitted to me for review.

I am hoping that the absence of the evidence that is important will be sufficient to have a successful appeal but the request for a declaration from me is just not possible because I just don't have any independent memory. If there is anything else I can do please let me know, otherwise I'm sorry I couldn't be of better help.

Very truly yours,

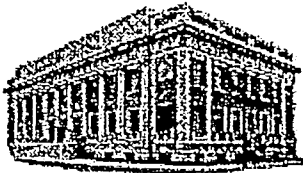
ENBODY, DUGAW & ENBODY



Joseph P. Enbody

JPE/kms

A P P E N D I X - C



Equal Justice for All

Lewis County Prosecuting Attorney's Office

April 1, 2013

Joseph P. Enbody
Attorney at Law
107 South Tower
Centralia, WA 98531

RE: **State v. Miller, Weston Garrett**
Lewis County Cause No. 12-1-00145-1

Dear Mr. Enbody:

The standard range sentence, assuming one felony point for the UPF 2 charges, is 250-333 months. The state's offer at this point is 360 months, consisting of 300 months (standard range) and an additional 60 months for the firearm enhancement (FAE). Apparently the sticking point is that the Defendant gets no good time off for the 60 month FAE.

First Degree, Premeditated Murder is classified as "a serious violent offense." That means Mr. Miller would only get 15% off the standard range sentence, and no time off the 60 months FAE. If we could negotiate a sentence that allowed the Defendant to earn get good time off for the entire 360 months, that would mean he would actually serve **306 months**. We can get to this number another way without modifying any of the charges in the Amended Information.

The State proposes that Mr. Miller plead guilty as charged and agree to a reduced standard range sentence of 290 months, plus the 60 months FAE. If he receives good time credit while incarcerated, he will earn 15% of 290, or 43.5 months.

290.0
- 43.5
=====
246.5 months (standard range) + 60 months FAE = 306.5 months

EXHIBIT - 3

EXHIBIT - 3

**WASHINGTON STATE
BAR ASSOCIATION**
Office of Disciplinary Counsel

Felice P. Congalton
Managing Disciplinary Counsel

November 2, 2018

Weston Miller
DOC #366767
Airway Heights Corrections Center
POB 2049
Airway Heights, WA 99001-2049

Re: ODC File: 18-01854
Your grievance against lawyer Joseph Paul Enbody

Dear Mr. Miller:

We received your grievance (complaint) against a lawyer and assigned the file number indicated above. The Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC) govern the grievance process. The WSBA's Office of Disciplinary Counsel, under delegated authority from the Washington Supreme Court, must review and may investigate a grievance against a lawyer to determine if the lawyer's conduct should affect his or her license to practice law. We are not a substitute for protecting your legal rights. We cannot represent you or give you legal advice. Time deadlines for civil and criminal cases are not affected by filing a grievance.

We reviewed your grievance and it appears you are concerned with the way your lawyer represented you in a criminal case. Ineffective assistance of counsel issues are best raised in court proceedings. Therefore, the general policy of this office is not to investigate claims of ineffective assistance of counsel unless there is a judicial finding of impropriety. It does not appear that the court found any impropriety. Regarding your file, enclosed is WSBA Advisory Opinion 2211.

Based on the information we reviewed, we are dismissing your grievance under ELC 5.7(a). We will take no further action. If you do not mail or deliver to us a written request for review of this dismissal within **forty-five (45) days** of the date of this letter, the decision to dismiss your grievance will be final. Should there be a judicial finding of impropriety, you may request that we reopen this matter.

Sincerely,



Felice P. Congalton
Managing Disciplinary Counsel

Enclosures: WSBA Advisory Opinion 2211, Lawyer Discipline in Washington

cc: Joseph Paul Enbody (with enclosures and copy of grievance)

DO NOT SEND ORIGINALS. We will scan and then destroy the documents you submit.



1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
206-727-8207 | caa@wsba.org | www.wsba.org



Advisory Opinion: 2211

Year Issued: 2011

RPC(s): RPC 1.4, 1.16(d), 3.4(c), CrR4.7(h)(3)

Subject: Obligation to Provide (redacted) Discovery Materials to Former Client

Issue

The inquiring lawyer asks whether there is an obligation to provide a copy of redacted discovery to a former client upon the client's request post-sentencing.

Short Answer

RPC 1.4, 1.16(d) and 3.4(c) govern your inquiry and require you to comply with CrR 4.7(h) (3) when producing any discovery materials to your former client.

Analysis

After a representation has terminated, an attorney has an obligation to surrender papers to which his or her former client is entitled. See RPC 1.16(d). These papers would generally include the client's file. See Advisory Opinion 2117 (2006); Advisory Opinion 1969 (2002); Advisory Opinion 181 (1987). Certain papers included in the client file, however, may be restricted by protective orders, confidentiality obligations, etc. that "may supersede a conflicting demand of a former client." Advisory Opinion 181. Documents subject to such restrictions therefore require separate handling and may be excepted from production with the rest of the client file. See *id.* In criminal cases, moreover, the criminal rules may operate to restrict the release of certain file materials to a client. See Advisory Opinion 2117 ("Ethically ... any information necessary to the adequate representation of the client or in the file at the conclusion of the representation of the client or in the file at the conclusion of the representation must be turned over to the client subject only to other law restrictions, such as the Criminal Rules.") (emphasis added). The ethics rules explicitly recognize that court rules may limit an attorney's ability to disclose certain information to a client and require an attorney to comply with any such court rules. See RPC 1.4 ("Communication"), Comment 7 ("Withholding Information: ... Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4 directs compliance with such rules or orders."); see also RPC 3.4(c) (a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists").

Conclusion

In the context of your inquiry, therefore, your general obligation to produce your former client's file is conditioned with respect to the discovery materials contained in that file, the

release of which is subject to the restrictions provided in CrR 4.7(h)(3). So before you release, to your former client, any discovery materials contained in the file, you are ethically required to ensure you have fully complied with CrR 4.7(h)(3).

In a supplemental inquiry, you asked whether the availability, to your former client, of a Freedom of Information Act ("FOIA") request changes the relevant ethical considerations. Any substantive issues presented by your FOIA inquiry are beyond the scope of the RPC Committee's limited function, which is to assist attorneys, when asked, to interpret their ethical obligations in specific circumstances. We do note, however, that the opinion we have provided above governs an attorney's ethical responsibilities when responding to a former client's request for the production of discovery materials, regardless of what other, non-attorney avenues may be available to the former client through which to pursue those materials.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

EXHIBIT - 4

EXHIBIT - 4

FILED

Court of Appeals

Division II

State of Washington

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,

Plaintiff,

vs.

WESTON MILLER,

Defendant.

)
) No. 142-1-00145-1
)

) Court of Appeals
) No. 53116-0-II
)

VERBATIM TRANSCRIPT OF PROCEEDINGS

FEBRUARY 13, 2019 - HEARING

Before the
Hon. J. Andrew Toynbee

APPEARANCES:

For the Plaintiff: SARA BEIGH
Deputy Prosecutor
Chehalis, WA

For the Defendant: PRO SE

Also present: J.P. ENBODY
Attorney at Law
Centralia, WA

Jessica L. Turner, CCR No. 3187
Official Court Reporter
Lewis County Superior Court
Chehalis, Washington 98532
(360) 740-2658

1 (The following took place on February 13, 2019:)

2 MS. BEIGH: This is State v. Weston Garrett
3 Miller, 12-1-145-1. Sara Beigh on behalf of the
4 state. J.P. Enbody is also present. Mr. Miller is
5 present I believe on the phone. We are here on
6 Mr. Miller's motion.

7 THE COURT: All right. Mr. Miller, this is Judge
8 Toynebee. You are in open court. Go ahead and tell
9 me what you are asking the court to do.

10 MR. MILLER: Well, I've got many correspondences
11 from J.P. Enbody that he destroyed my client file, so
12 I would like the court to compel Enbody to relinquish
13 the file.

14 THE COURT: You want him to relinquish an empty
15 file?

16 MR. MILLER: Because I need a judicial finding of
17 that fact.

18 THE COURT: What fact?

19 MR. MILLER: That he -- in fact, it does not exist
20 anymore. He completely destroyed it.

21 THE COURT: So you are asking me to compel him to
22 turn over documents that he does not have?

23 MR. MILLER: I guess in a sense, yeah. I mean, I
24 don't know if he is lying to me or whatnot.

25 THE COURT: Mr. Enbody.

1 MR. ENBODY: Thank you. These files, the
2 discovery, are numbered sequentially at the bottom of
3 each page. You can tell, you know -- so you know
4 from start to finish what you've got. And so when
5 you go through for a trial, some of the statements
6 are not used, some of the witnesses that provided
7 statements, or what have you, are not used at all,
8 and so I've kept portions of it. But what I've tried
9 to impress upon Mr. Miler is since they are numbered
10 sequentially, just ask for public records request,
11 and you can tell by looking at the bottom of each
12 page that nothing has been altered or changed. So I
13 have portions but they are not complete.

14 THE COURT: All right. Mr. Miller, anything else?
15 So you are asking him to turn over what he has?

16 MR. MILLER: Well, I mean, it would be nice to
17 have the entire file so I can, you know, write a good
18 PRP. But since it's incomplete, I mean, I don't know
19 what the prosecutor withheld or whatnot, so how can I
20 bring up any Brady violations?

21 THE COURT: Go ahead, Ms. Beigh.

22 MS. BEIGH: And just so you know, he -- Mr. Miller
23 has done a PDR request, and all of our file that is
24 disclosable to him, absent like autopsy photos and
25 things of that nature, which are not disclosable

1 under PDR, has been turned over.

2 And as Mr. Enbody explained, our entire discovery
3 is Bates stamped. So unless he thinks he's missing
4 something through the numbers of Bates stamping,
5 which he could easily go through and see if it says
6 one, two, three, four, five, everything has been
7 turned over that is disclosable. And if something is
8 not, then, obviously, we sent a letter explaining
9 what is not disclosable and why, why there is an
10 exception. So he -- Mr. Miller, has repeatedly been
11 speculative that we are withholding stuff from him.

12 THE COURT: All right. So, Mr. Miller, if I
13 understand correctly, your position is that
14 Mr. Enbody should turn over everything he has, and
15 the state should turn over everything it has. And
16 then you can compare to see if there is some
17 misconduct by the state if they didn't turn
18 everything over to you.

19 MR. MILLER: That was my intent.

20 THE COURT: Okay.

21 MR. MILLER: But Enbody doesn't have the complete
22 file.

23 THE COURT: Right. That is not a proper use of
24 either the discovery rules or enforcement of the
25 rules of professional conduct, and arguably not a

1 proper use of the Freedom of Information Act and
2 Washington's version of it. So I also don't believe
3 that it's a basis for compelling Mr. Enbody to
4 provide incomplete documents, so I'm denying the
5 motion to compel.

6 MR. MILLER: That doesn't make sense. I mean, I'm
7 allowed to do a public disclosure to get the public
8 records of the prosecutor and --

9 THE COURT: And you have.

10 MR. MILLER: And Mr. Enbody was supposed to have
11 given me this file back in 2015 when I was trying to
12 write my PRP.

13 THE COURT: Did you ask him back in 2015?

14 MR. MILLER: The motion that -- I got attached
15 many, many letters from him saying that he refused to
16 give it to me and he destroyed it.

17 THE COURT: And his conclusion of the case is when
18 he filed the notice of appeal on your behalf, and
19 that was June 6, 2013, so almost two years later you
20 asked him for the first time to give you these
21 documents. And the RPCs do not require him to keep
22 everything in a file forever. So once again, I'm
23 denying the motion to compel.

24 MR. MILLER: Well, the RPC states that he is
25 supposed to at least hang onto it for seven years. I

1 mean --

2 THE COURT: I'm not --

3 MR. MILLER: -- he says he destroyed it right upon
4 the termination of his representation. But RPC
5 states that he is supposed to -- upon termination, he
6 is supposed to take steps to protect my files, my
7 interests to be able to do that.

8 THE COURT: It says take steps reasonably
9 necessary or reasonably practicable so --

10 MR. MILLER: Yeah --

11 THE COURT: -- once again, Mr. Miller --

12 MR. MILLER: If he's going to destroy it, he's got
13 to let me know that he's going to destroy it so I can
14 get ahold of it before he destroys it.

15 THE COURT: All right. Mr. Miller, I've denied
16 your motion and that is the end of this hearing.

17 MR. MILLER: Okay. Can you send me a rough draft
18 of the findings and conclusions of this hearing?

19 THE COURT: Once it's done, once there is an order
20 entered, it will be in the file and you can request
21 it.

22 MR. MILLER: Well, will you mail me a copy,
23 please?

24 THE COURT: I'm not going to mail you anything,
25 sir. You can request it just like anybody else would

1 request a document. The state might send a courtesy
2 copy to you.

3 MS. BEIGH: I will.

4 MR. MILLER: That would be nice. Thank you.

5 THE COURT: All right. Thank you. That will
6 terminate this hearing. And for the record I signed
7 that.

8 (Court was in recess.)
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I, JESSICA L. TURNER, Certified Court Reporter for
the State of Washington, do hereby certify:

That said transcript is a full, true, and correct transcript of my shorthand notes of the proceedings heard before Hon. J. Andrew Toynbee on February 13, 2019, at the Lewis County Superior Court, Chehalis, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

Signed this 19th day of July, 2019.

Jessica L. Turner
CCR No. 3187

EXHIBIT - 5

EXHIBIT - 5

SUPERIOR COURT OF WASHINGTON
FOR LEWIS COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

WESTON GARRETT MILLER,
Defendant.

No. 12-1-00145-1

MOTION TO COMPEL PRODUCTION OF
CLIENT FILE & DISCOVERY MATERIALS

I. IDENTITY OF MOVING PARTY

Defendant, Weston G. Miller, pro se, request the relief set out below.

II. STATEMENT OF RELIEF SOUGHT

Weston G. Miller is hereby moving this Court to compel production of his client file and discovery materials from his former trial attorney Joseph Paul Enbody. This motion is made pro se and does not involve issues raised by his appellate counsel on direct appeal or Miller's personal restraint petition.

III. FACTS RELEVANT TO THE MOTION

I Weston G. Miller, pro se, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1) On March 26, 2015, I contacted J.P. Enbody requesting discovery and case related materials. (This letter is an accurate copy based upon my notes and recollection of the original.) On April 1, 2015, he responded stating that he does not store these materials after the case has been completed for a period

of time and suggested that I pay for them through the Freedom of Information Act. See Exhibit A

2) On April 27, 2015, I requested these documents again from J.P. Enbody, and explained why I needed them. On April 30, 2015, he reminded me again that he couldn't provide me with the discovery materials and case file because he does not keep these materials after a case has been completed. He doesn't have the storage capability for every criminal case once it has been completed. Additionally, his discovery materials are not always totally complete, and he couldn't provide these materials anyway because he no longer has them. See Exhibit B

3) On May 10, 2015, I attempted again to acquire these documents from my former attorney and explained to him that he has misinterpreted his duties to me as his client under the Rules of Professional Conduct and that he had no right to dispose of my client file and case related materials without my permission or court order. I also reminded him that he stated that his discovery materials that are provided to him are not always complete. Perhaps the prosecution withheld evidence from him in discovery, or law enforcement failed to turn over exculpatory evidence to the prosecution. I would have no way of uncovering these or other potentially conviction-invalidating issues if the records from this case are allowed to be concealed by my attorney, the prosecution, or law enforcement. On May 14, 2015, he responded referring me to CrR 4.7(h)(3), concerning custody of discovery materials. Contrary to my beliefs he argued that the discovery and case related materials do not belong to me. He would need a warehouse to contain all the discovery materials that he has ever received in any criminal case. Once again he reiterated the fact that he no longer has my discovery materials and they were destroyed after his representation had ended. See Exhibit C

4) The mandate on direct appeal was filed on January 16, 2015. My personal restraint petition was filed on November 6, 2015, and was finalized on August 13, 2018, when I received the Supreme Court's final decision. These arguments revolved around a missing trial record, ineffective assistance of counsel(s), and prosecutorial misconduct. COA No. 44966-8-II; 48200-2-II; Sup Ct. No. 94127-1.

5) On January 9, 2018, I filed a public disclosure request to obtain the prosecutor's case file and discovery for the above cause number. This request was completed through two separate installments. One was sent out to the address I requested on or about May 8, 2018, and the other was sent out on or about September 11, 2018. Given the scope of this request and the large number of responsive documents, I was forced to have these documents downloaded onto disk and sent to a family member to print them out and sent to me via U.S. mail. Because of the hardships imposed upon my family to pay for this public disclosure request, the cost incurred for the documents to be printed out on their computers, and cost of postage. I did not fully receive everything that I had requested until October 15, 2018.

6) Upon review of the States file, I noticed many discrepancies. Therefore, justice will be best served by a timely disclosure of my client file and discovery materials from J.P. Enbody.

IV.

GROUND FOR RELIEF

RPC 1.4(a)(4), 1.15(c)(3), 1.16(d) and 3.4(a)(c) govern this motion and grant this Court authority to compel Joseph Paul Enbody to comply with the RPCs and CrR 4.7(h)(3). Enbody has an obligation to surrender papers to which his former client is entitled. See Exhibit D (WSBA Rules of Prof'l Conduct Comm., Advisory Op. 2211 (2011) citing to Op. 2117 (2006), Op. 1969 (2002), and Op. 181 (1987)). Also See State v. Padgett, 2018 Wash. App. LEXIS 1634;

No. 35034-7-III (2018)(Now published opinion)(citing to CrR 4.7(h)(3); RPC 1.16(d); and WSBA Rules of Prof'l Conduct Comm., Advisory Op. 181 (rev. 2009)).

V.

CONCLUSION

Miller is respectfully asking this Court to compel Joseph P. Enbody to immediately produce his former client's original case file and discovery materials and not a recreated file from the prosecution.

RESPECTFULLY submitted on December 4, 2018, in Spokane County, WA.



Weston G. Miller; DOC# 366767
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001-2049

EXHIBIT - A

EXHIBIT - A

March 26, 2015

Joseph P. Enbody
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: State v. Miller, Lewis County Superior Court No. 12-1-00145-1;
Request for Discovery and Case Related Materials.

Mr. Enbody:

Please, send me a copy of my discovery and case related materials (client file) that you acquired through your involvement in the above referenced case. Including all court documents filed by you and the prosecutor during pretrial hearings and throughout trial. I also need a copy of the prosecutor's edited/alterd version played of Ex.19 shown to the jury. Along with a copy of the State's power-point presentation.

Thank you for your time and attention to this matter.

Sincerely,



Weston G. Miller, DOC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

c: file

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

April 1, 2015

Mr. Weston G. Miller, DOC #366767 AA04
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

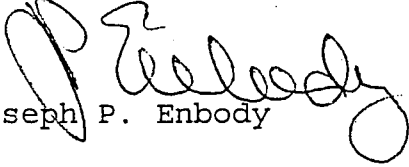
RE: State of Washington v. Weston Miller
Lewis County Superior Court Cause No. 12-1-00145-1

Dear Mr. Miller:

I am in receipt of your most recent correspondence concerning the court documents and the discovery materials that were provided to us earlier on in this case. However, I do not store these materials after the case has been completed for a period of time. I think you could probably request those documents through the Freedom of Information Act. You should address the court records through the Lewis County Superior Court Clerk's Office. Their address is 345 West Main Street, MS:CLK01, Chehalis, WA 98532. The police reports and discovery materials would be requested through the Lewis County Prosecutor's Office at 345 West Main Street, MS:PRO01, Chehalis, WA 98532. I am hoping that the information you obtain will help you with either a new trial or some other more beneficial result.

Very truly yours,

ENBODY, DUGAW & ENBODY


Joseph P. Enbody

JPE/lm


*Hope all goes
well for you*


EXHIBIT - B

EXHIBIT - B

April 27, 2015

Joseph P. Enbody,
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: State v. Miller, Lewis County Superior Court No.12-1-00145-1;
Request for Discovery and Case Related Materials.

Dear Mr. Enbody:

I am writing to ask that you send me a copy of all the discovery and case related materials (client file) you acquired through your involvement in the above referenced case.

I am currently attempting to prepare and submit a personal restraint petition challenging my current convictions. However, this will not be possible unless you provide me with a complete copy of the above requested materials. I am indigent and have no way of acquiring the records unless you provide them to me.


I am sure that you are already aware that pursuant to RPC 1.16(d) and the Washington State Bar Association's Formal Ethics Advisory Opinion 181: a lawyer shall take steps necessary to protect a client's interests by surrendering all papers to the client; and the file generated in the course of representation must be turned over to the client at the clients request. Additionally, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions... CrR 4.7(h)(3).

I know that I can ask for help from the Washington State Bar Association, but I would prefer to resolve this with you directly.

I am proceeding pro se and under the time constraints of RCW 10.73.090; therefore, your prompt action and response are requested. Please mail all the requested materials to me at the address below as soon as possible.

Thank you for your time and attention to this matter.

Sincerely,



Weston G Miller, DOC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

c: File

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

April 30, 2015

Mr. Weston Miller, DOC #366767 AA04
Clallam Bay Corrections Center
1530 Eagle Crest Way
Clallam Bay, WA 98326

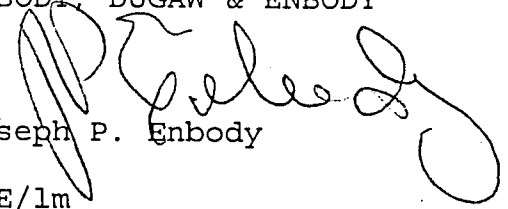
RE: State of Washington v. Weston Miller
Lewis County Superior Court Cause No. 12-1-00145-1

Dear Mr. Miller:

I am in receipt of your letter of April 27, 2015 and as I indicated to you before, I am not in a position to provide the materials you have requested because I do not keep the discovery materials after a case has been completed. The materials in your case were quite voluminous and I, quite frankly, do not have storage capability for every criminal case once it has been completed. Additionally, I have found over time that my discovery materials are not always totally complete and some materials that may have come my way that were not related to the case other than on a very incidental basis and were not germane to the case are not kept anyway. To make a long story short, I cannot provide these materials because I no longer have them. As per my earlier discussion, I am sure the Prosecutor maintains those records and I have found it best that he keep them after a case is closed rather than me. In any event, my suggestion would be that you contact the Prosecutor as I simply do not have the materials you are requesting.

Very truly yours,

ENBODY, DUGAW & ENBODY


Joseph P. Enbody

JPE/lm

EXHIBIT - C

EXHIBIT - C

May 10, 2015

Joseph P. Enbody,
Attorney at Law
107 S. Tower
Centralia, WA 98531

Re: State v. Miller, Lewis County Superior Court No.12-1-00145-1;
Request for Discovery and Case Related Materials.

Dear Mr. Enbody:

I am in receipt of your letter, dated April 30, 2015, concerning my request for a copy of all the case-related materials you acquired through your involvement in the above referenced cause number.

You are claiming that you no longer have the materials I am requesting, and you have suggested that I request the materials from the Prosecutor's Office. I believe you have misinterpreted your duties to me as your client under the Rules of Professional Conduct. The client file and case-related materials you acquired through your involvement belong to me. Prior to your getting rid of the materials, you should have contacted me and asked me what I wanted you to do with my property. You are not authorized to dispose of my property without my permission.

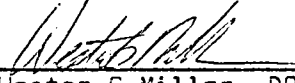
Regarding your suggestion that I contact the Prosecutor's Office and request a copy of their file from them, I have already done that. They have responded treating my request as a public records request, and require a substantial amount of money for the records. As I have previously told you, I am indigent and cannot afford to pay anything. Plus, records provided pursuant to RCW 46.56. et seq, are subject to a substantially larger amount of redactions than are allowed under CrR 4.7. Also, the Prosecutor's file does not have any of the materials provided to you by the Private Investigator, Jim Armstrong, hired on my behalf in this case.

As you pointed out in your letter, discovery materials that are provided to you are not always complete. Perhaps the prosecution withheld evidence from you in discovery, or maybe law enforcement failed to turn over material exculpatory evidence to the prosecution. I would have no way of uncovering these or other potentially conviction-invalidating issues if the records from this case are allowed to be concealed by you, the prosecution, or law enforcement.

Again, I ask that you do whatever it takes to provide me with a complete copy of all the case-related materials you acquired through your involvement in this case. If you no longer have them, then, I suggest that you go to the Prosecutor's Office, acquire a complete copy of their file, and provide it to me. After all, the requested materials belong to me and you should not have gotten rid of them without my permission. Therefore, it is only fair that you bear the burden of replacing them.

Thank you for your time and attention to this matter. I look forward to your, timely, formal response.

Sincerely,


Weston G Miller, DOC #366767
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

c: File

ENBODY, DUGAW & ENBODY

ATTORNEYS AT LAW

JOSEPH P. ENBODY
PAUL J. DUGAW
JOSEPH O. ENBODY

DAVID P. ARCURI
BRIAN J. GERHART

May 14, 2015

Mr. Weston Miller, DOC #366767 AA04
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

RE: State of Washington v. Weston Miller
Lewis County Superior Court Cause No. 12-1-00145-1

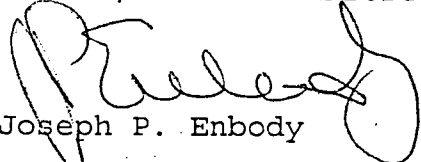
Dear Mr. Miller:

I once again read your May 10, 2015 correspondence and in reply I thought I would direct you to Criminal Rule 4.7 concerning custody of discovery materials. As you can see, contrary to your letter, the discovery materials in a criminal case do not belong to you. By this time in my career I would need a warehouse to contain all of the discovery materials that I have ever received in any criminal case. So I would once again reiterate to you I no longer have the discovery materials. They were destroyed after my representation had ended. As to the materials provided by the private investigator, Jim Armstrong, you should feel free to contact him directly although I believe that most of my communications with him were verbal and not in writing, but perhaps he has maintained some records. His mailing address is:

Mr. Jim Armstrong
c/o Dana Williams Law Group, P.S.
57 West Main Street Ste. 200
Chehalis, WA 98532

Very truly yours,

ENBODY, DUGAW & ENBODY



Joseph P. Enbody

JPE/lm

or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iv).

(2) *Informants.* Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) *Medical and Scientific Reports.* Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

(h) *Regulation of Discovery.*

(1) *Investigations Not to Be Impeded.* Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Continuing Duty to Disclose.* If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) *Custody of Materials.* Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.

(4) *Protective Orders.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Excision.* When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the

records of the court, to be made available to the appellate court in the event of an appeal.

(6) *In Camera Proceedings.* Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) *Sanctions.*

(i) if at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

[Amended effective September 1, 1986; September 1, 2005; September 1, 2007.]

Comment

Supersedes RCW 10.37.030, .033; RCW 10.46.030 in part.

RULE 4.8 SUBPOENAS

Subpoenas shall be issued in the same manner as in civil actions.

Comment

Supersedes RCW 10.46.030 in part; RCW 10.46.050.

**RULE 4.9 PRETRIAL CONFERENCE
[RESCINDED]**

[Rescinded effective September 1, 1983.]

RULE 4.10 MATERIAL WITNESS

(a) *Warrant.* On motion of the prosecuting attorney or the defendant, the court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that

(1) The witness has refused to submit to a deposition ordered by the court pursuant to rule 4.6; or

(2) The witness has refused to obey a lawfully issued subpoena; or

(3) It may become impracticable to secure the presence of the witness by subpoena.

Unless otherwise ordered by the court, the warrant shall be executed and returned as in rule 2.2.

EXHIBIT - D

EXHIBIT - D



WSBA

Advisory Opinion: 2211**Year Issued: 2011****RPC(s): RPC 1.4, 1.16(d), 3.4(c), CrR4.7(h)(3)****Subject: Obligation to Provide (redacted) Discovery Materials to Former Client**

Issue

The inquiring lawyer asks whether there is an obligation to provide a copy of redacted discovery to a former client upon the client's request post-sentencing.

Short Answer

RPC 1.4, 1.16(d) and 3.4(c) govern your inquiry and require you to comply with CrR 4.7(h)(3) when producing any discovery materials to your former client.

Analysis

After a representation has terminated, an attorney has an obligation to surrender papers to which his or her former client is entitled. See RPC 1.16(d). These papers would generally include the client's file. See Advisory Opinion 2117 (2006); Advisory Opinion 1969 (2002); Advisory Opinion 181 (1987). Certain papers included in the client file, however, may be restricted by protective orders, confidentiality obligations, etc. that "may supersede a conflicting demand of a former client." Advisory Opinion 181. Documents subject to such restrictions therefore require separate handling and may be excepted from production with the rest of the client file. See *id.* In criminal cases, moreover, the criminal rules may operate to restrict the release of certain file materials to a client. See Advisory Opinion 2117 ("Ethically ... any information necessary to the adequate representation of the client or in the file at the conclusion of the representation of the client or in the file at the conclusion of the representation must be turned over to the client subject only to other law restrictions, such as the Criminal Rules.") (emphasis added). The ethics rules explicitly recognize that court rules may limit an attorney's ability to disclose certain information to a client and require an attorney to comply with any such court rules. See RPC 1.4 ("Communication"), Comment 7 ("Withholding Information: ... Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4 directs compliance with such rules or orders."); see also RPC 3.4(c) (a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists").

Conclusion

In the context of your inquiry, therefore, your general obligation to produce your former client's file is conditioned with respect to the discovery materials contained in that file, the

release of which is subject to the restrictions provided in CrR 4.7(h)(3). So before you release, to your former client, any discovery materials contained in the file, you are ethically required to ensure you have fully complied with CrR 4.7(h)(3).

In a supplemental inquiry, you asked whether the availability, to your former client, of a Freedom of Information Act ("FOIA") request changes the relevant ethical considerations. Any substantive issues presented by your FOIA inquiry are beyond the scope of the RPC Committee's limited function, which is to assist attorneys, when asked, to interpret their ethical obligations in specific circumstances. We do note, however, that the opinion we have provided above governs an attorney's ethical responsibilities when responding to a former client's request for the production of discovery materials, regardless of what other, non-attorney avenues may be available to the former client through which to pursue those materials.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

EXHIBIT - E

EXHIBIT - E

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

Weston Garrett Miller
Defendant.

NO. 12-1-00145-1

Order Denying Motion
to Compel

☒ On motion of the Defendant;
☐ By stipulation of the parties;


IT IS HEREBY ORDERED:

The Defendant's motion to compel J. P.
Embady to hand over all portions of the
above referenced cause number file, which
is no longer complete, is denied.

DATED this 13 day of February, 2019


SUPERIOR COURT JUDGE

PRESENTED BY:


Deputy Prosecuting Attorney
WSBA # 35564

APPROVED BY:

Attorney for Defendant
WSBA # _____

Distribution: White-Clerk Canary-Defendant
Blank Order

Pink-SO Records

Gold-Prosecutor

EXHIBIT - 6

EXHIBIT - 6



WASHINGTON STATE BAR ASSOCIATION

GUIDE TO BEST PRACTICES FOR CLIENT FILE RETENTION AND MANAGEMENT

Prepared by

Law Office Management Assistance Program (LOMAP)

and

Professional Responsibility Counsel

March 2010

GUIDE TO BEST PRACTICES FOR CLIENT FILE RETENTION AND MANAGEMENT

I. PURPOSE OF THIS GUIDE

Despite prognostications of a paperless office, lawyers continue to be faced by mountains of paper and now also electronic data. One of the most frequently asked questions on the WSBA's Ethics Line (206-727-8284 or 800-945-WSBA) is what to do with client files.

LAWYER RESPONSIBILITIES

Lawyer responsibilities rest chiefly upon RPC 1.15A and 1.15B that, among other things, require the lawyer to identify, safeguard, account for, and deliver to the client any property in the lawyer's possession that belongs to the client. Additional responsibilities may arise under local, states and federal law, such as, city or county licensing rules, state revenue rules and regulations, and federal tax laws. See RCW Chapter 19.215 Disposal of Personal Information.

LIMITS OF THIS GUIDE

Information contained in this Guide is presented with the understanding that its user is the one responsible for compliance with appropriate ethical and legal requirements.

Neither the WSBA nor the Rules of Professional Conduct require a lawyer to retain an entire client file for a specific period of time. However, RPC 1.15B requires that trust account records and related documents be retained for seven (7) years. The lawyer should keep permanently a "file" of the disposition of client files. This file includes receipts, releases, description of disposition, and copies of descriptions of materials (or copies of the materials themselves) that the lawyer returned to the client and to other appropriate parties.

A suggested table of client file retention dates by practice area is presented below.

A lawyer's engagement letter and fee agreement may include language that describes the lawyer's file retention policy. In Washington most, if not all, of the file is the property of the client unless a different understanding is reached with the client.¹ Therefore, a file retention policy may specify that the lawyer returns the original file to the client after the conclusion of the matter. Circumstances and prudence dictate that the lawyer may wish to retain copies of certain contents of the client file as well as a record of the disposition, releases, receipts, and so forth in perpetuity. Certain practice areas may dictate compliance with other guidelines. Compliance with the suggestions in this guide is not a bar to discipline or other proceedings.

¹ See WSBA Opinion 181.

OTHER RESOURCES

For an excellent resource, see "Records Retention in the Private Legal Environment: Annotated Bibliography and Program Implementation Tools" at 93 Law Lib. Jour. 7 (2001) http://www.aallnet.org/products/pub_llj_v93n01/2001_01.pdf

For other materials, consult

ARMA International (www.ARMA.org)

Society for Human Resource Management (www.SHRM.org)

Secretary of State, State of Washington (<http://www.secstate.wa.gov/archives/>)

Internal Revenue Service (www.irs.gov)

American Institute of Certified Public Accountants AICPA (www.aicpa.org)

American Bar Association (www.abanet.org) Model Rules of Professional Conduct and Opinions.

QUESTIONS ABOUT THE GUIDE

If questions about the Guide arise, contact the WSBA's Ethics Line at 206-727-8284 or the Law Office Management Assistance Program at 206-727-8237. You may also use the toll-free number of 800-945-WSBA.

SCOPE

This guide describes best practices guidelines of records management for client files only. It is not possible to promulgate guidelines for records retention and management that are appropriate in all instances under all circumstances. The lawyer must evaluate each client file individually for the facts, circumstances, and possible future needs for the materials in the file.

The lawyer should keep permanently a "file" of the disposition of the client's file that includes receipts, releases, description of disposition and copies of descriptions of materials (or copies of the materials themselves) that the lawyer returned to the client and to other appropriate parties.

This guide is limited to papers and records that become part of the client's file, but not allied documents such as time records, billings, or bank records. The management of other records such as firm personnel records, firm financial records, or computerized records (other than client files) is not considered here.

WHAT IS RECORDS MANAGEMENT

Records management is (1) planning, description, documentation, administration, and the necessary training of all employees about the records management system and (2) the capturing, organizing, indexing, retention, storage, retrieval and destruction of the records in a client's file.

II. CLIENT RECORDS

WHAT ARE EXAMPLES OF TYPES OF RECORDS

There are several types of records including intrinsically valuable records, other paper records, and electronic records.

Intrinsically valuable records include original photographs, stock certificates, wills, promissory notes, deeds, birth certificates, among others;

Other paper records include correspondence, pleadings, notes, memoranda, checks and other financial materials such as tax returns, bank statements, financial statements, expense records, inventories; and telephone messages, emails, exhibits, case printouts, research materials and so forth;

Electronic records include computer files and other materials stored on portable media such as hard disks, CDs, DVDs, and flash drives.

More generally, "client records" are records that come into possession of a lawyer as a result of representation of a client or records that the lawyer creates as a result of that representation. In dealing with the question of the assertion of an attorney's lien on a client's file, WSBA Opinion 181 discusses the composition of a client file a lawyer assembles while representing a client. Such a file may include:

- Client papers – the actual documents the client gives to the lawyer or papers, such as medical records, the lawyer has acquired at the client's expense;
- Documents the disposition of which is controlled by a protective order or other confidentiality;
- Miscellaneous material; and
- The balance of the file, including documents stored electronically.

LIFE CYCLE OF A CLIENT FILE

The life cycle of a client file begins with the formation of a record created on behalf of a client or the receipt of a document relating to the representation and ends with the delivery of the file to the client or its destruction by the lawyer. The lawyer will add documents as they come into the lawyer's hands as well as notes a lawyer may make about case progress, strategy, impressions of witnesses, results of investigation, and so forth.

A critical stage of the cycle occurs when the representation is completed. At this point the lawyer needs to determine the disposition of the file from among several options depending on the following factors:

- any agreement with the client about the file
- the nature of the matter concluded

- ethical rules, court rules, and other laws.

A typical life cycle of a file is outlined below coupled with suggested actions:

- ✓ Engagement letter or fee agreement is signed by client states the conditions agreed to by the client as to who owns the file and the storage and disposition of the file at the conclusion of the representation
- ✓ Assign next file number (time and billing system may assign the file number)
- ✓ Open file on the time and billing system
- ✓ Create a client folder and subfolders on the computer system²
- ✓ Create physical file folder³
- ✓ Create duplicate physical file for client to use for copies of documents sent by the lawyer
- ✓ Only employees of the law practice have access to client files
- ✓ File returned to locked cabinet each day
- ✓ File check out card describes who has current possession of file
- ✓ File new items for 15 uninterrupted minutes per day—important!
- ✓ Representation ends
- ✓ File closed⁴
- ✓ Contents of file reviewed by lawyer and file culled for unnecessary items, intrinsically valuable items or original documents
- ✓ File indexed in the permanent closed file system
- ✓ File stored on site for initial period of time
- ✓ File returned to client in exchange for signed receipt from client or
- ✓ File stored off site for remaining time based on agreement with client
- ✓ Written notice sent to client's last address describing impending disposition
- ✓ File Returned to Client in Exchange for Signed Receipt from Client or
- ✓ File Destroyed

² See page 8 below for an example.

³ LOMAP recommends hard-back partitioned file folders that can be recycled for new matters.

⁴ See next page for a checklist of actions for closing a client file.

FILE CLOSING CHECKLIST

FILE NO. _____ FILE NAME _____

DATE _____ ATTY _____

DATE	INITIALS	ACTION
		REMOVE FILE FROM ACTIVE STATUS AND ASSIGN CLOSED FILE NUMBER
		MARK THE FILE CLOSED AND ENTER DATE AND CLOSED FILE NUMBER IN CLOSED FILE REGISTER AND/OR ON INDEX CARD
		MAKE SURE NOTICES OF <i>LIS PENDENS</i> OR LIEN ABSTRACTS HAVE BEEN DISCHARGED
		MAKE SURE ALL ORIGINAL JUDGMENTS, ORDERS, DECREES, COST BILLS, DEEDS, CONTRACTS, ETC. HAVE BEEN FILED OR RECORDED
		MAKE SURE ANY UCC OR SECURITY INTEREST HAS BEEN PERFECTED AND FILED
		CHECK FOR UNBILLED ACTIVITIES AND SEND FINAL BILL
		REVIEW FILE FOR DOCUMENTS TO BE INCLUDED IN FORMS SYSTEM
		DUPLICATE DOCUMENTS, UNUSED NOTE PADS, ETC., REMOVED FROM FILE (DO NOT REMOVE DRAFT WORK PRODUCT, MEMOS, PHONE MESSAGES, RESEARCH NOTES, ETC.)
		CHECK FOR LOOSE, UN-FILED DOCUMENTS AND PLACE IN THE FILE
		IF AN UNSATISFIED JUDGMENT IS INVOLVED, DIARY THE FILE FOR 3, 6, AND 9 YEARS TO REVIEW ASSETS AND RENEWAL OF JUDGMENT PRIOR TO THE EXPIRATION OF 10 YEARS
		IF UCC IS INVOLVED, DIARY FILE FOR RENEWAL OF UCC FILING
		IF THE FILE INVOLVES A LEASE OR OPTION TO BUY, DIARY THE FILE FOR 6 MONTHS PRIOR TO EXPIRATION
		IF THE FILE INVOLVES A CRIMINAL MATTER, CHECK TO SEE IF EXPUNGEMENT IS POSSIBLE AND DIARY THE FILE FOR 3 YEARS
		FINAL REVIEW BY LAWYER FOR ANY FURTHER WORK TO BE DONE AND CLOSING LETTER ⁵ TO CLIENT WITH RETURN OF ANY ORIGINAL DOCUMENTS
		ASSIGN DESTRUCTION DATE AND ENTER INTO CALENDAR SYSTEM AND/OR MARK IN CLOSED FILE LIST OR ON INDEX CARD

⁵ Sample closing letter:

Re: [Name of Matter]

Dear _____

Thank you for allowing our office to assist you with the referenced matter. Our work is now concluded. If there is any way our service might be improved, please let us know.

We keep your file for [cite file retention policy]. We will contact you to return the file to you. If you notify us that you do not wish to have the file we will destroy the contents of the file.

We ask that you think of mentioning our office if anyone you know wishes to discuss whether they need legal assistance.

Sincerely,

[Lawyer Name]

III. BEST PRACTICES FOR CLIENT FILE MANAGEMENT

Think carefully about your office systems for paper flow. An example is the mail. Who opens it? Is it date stamped? Is it copied? Is it scanned? Is it noted on the back for which sub-file to file it in? Is information in the mail extracted and put in a calendar and/or to-do list? This and other similar systems are essential for an efficient office.

The file is composed of both paper and electronic documents and images (PDF, JPEG, etc.). Think in terms of a bifurcated client file: a file for discovery; a file for legal work product; a file for communications; a file for notes, etc. with each part kept possibly in a separate location for convenience.

IN THE BEGINNING TALK ABOUT THE END

At client intake, identify who owns the file⁶, what documents the client is expected to provide initially, which documents will be returned to the client after the conclusion of the representation, which documents the lawyer will retain and for what duration, among other considerations. The engagement letter or fee agreement is the logical place for these disclosures.

IMPORTANCE OF SUBFILES

The purpose of the paper file is to house all documents for a particular matter in a logical system that facilitates locating a document. Each client file may include sub-files that identify categories of documents, such as

- ☞ Correspondence
- ☞ Court Records
- ☞ Financial Records
- ☞ Intake Form
- ☞ Interrogatories
- ☞ Leases/Agreements
- ☞ Motions
- ☞ Notes
- ☞ Pleadings
- ☞ Research
- ☞ Miscellaneous

Keep a supply of these marked subfiles available as each client's file is constructed from the outset of the representation.⁷ Add the client's name and file number to the category tabs. Use a numbering system that is simple and meaningful. For example, 10-100-10 where the 10 is the year; the 100 is the client; and the 10 is the matter.

⁶ See WSBA Opinion 181.

⁷ See the file products from Bindertek at <http://www.bindertek.com> and file label templates at www.avery.com.

USING SCANNED IMAGES

Consider scanning most or all of the most *important* documents for a case if others in your office need simultaneous access and/or you need frequent access to the documents. You can link to these electronic documents through Outlook's contacts feature or to the desktop, or to another convenient location on the computer. Another reason to use scanned images is to have access to documents remotely via the web or other network connection. This is a real time saver for you if the caller is referring to one of these electronic documents.

Follow a protocol for what is scanned, when it is to be scanned, and who scans it. Mark the documents as "scanned" before they are filed. Using the documents electronically enables easier access and a reduced chance of missing paper documents from the file. Back up electronic documents onto the web and to other local media such as a hard drive that is portable. Use an electronic folder hierarchy on your computer similar to this example to aid in locating documents:⁸

- ☞ The Johnson Law Office
 - ☞ Administration
 - ☞ Criminal
 - ☞ Civil
 - ☞ Real Estate
 - ☞ Family
 - ☞ Powell Joseph
 - ☞ CorresPDF
 - ☞ CorresW
 - ☞ Disclosures
 - ☞ Discovery
 - ☞ DocsClean
 - ☞ DocsNumbered
 - ☞ Drafts
 - ☞ ExpnsRcpts
 - ☞ Notes
 - ☞ Orders
 - ☞ Orders Proposed
 - ☞ Other

FILE EVERY DAY

Be sure to set aside 15 uninterrupted minutes a day to do the filing—no more, no less. That accumulates to one hour and fifteen minutes per week. This rule commits the lawyer or staff person to action within a timeframe that budgets proper time for this task.

Use an alphabetical accordion file to stage documents before filing and as a way to avoid losing any documents prior to their reaching their place in the proper file. The lawyer

⁸ Note that this hierarchy or parts of it may be set up in advance and copied and renamed as each new client is added.

may decide to combine the scanning task with the filing task. Note which client sub-file for each document on the reverse of the document if the subfile is the least ambiguous and/or the person doing the filing is not experienced in a law office.

Copy the document for two or more subfiles if that makes sense for users likely to retrieve the document. Consider adding an index to the subfile that lists the documents within the subfile.

THE MATTER IS CONCLUDED

The lawyer indexes the file to a closed file record, stores the file for a fixed period of time or returns the file to the client. See file closing checklist, above.

CAVEAT

Understand that, absent client consent, destroying records always involves risk. The lawyer must weigh the benefit of destruction of a record with the associated risk.

CLOSING AND STORAGE PROTOCOL

Washington's RPCs offer little specific guidance about the maintenance, storage or destruction of client files. RPC 1.15A and 1.15B require lawyers to safeguard client property. RPC 1.16 states that a lawyer must take reasonably practicable steps to return client property, including papers and documents, to the client at the termination of the representation. RPC 1.6 requires lawyers not to reveal information relating to the representation. These rules require that lawyers take reasonable steps to maintain client files properly, to protect any confidential information they contain and to dispose of them appropriately.

Active paper client files should be stored in secure cabinets. Files used during the day should be returned to the file at night. The lawyer may choose to have a "working file" that is comprised of copies of documents. These files also should be secured in the evening. **Be mindful of storage near sprinkler heads that could leak, particularly after an earthquake.** In larger offices, use an "out" card to describe who has current possession of the client file.

When a case is concluded, it is usually time to close a file. Closing a file is more than physically putting a file into a storage cabinet or box. Closing a file includes a review of the work done to ascertain that the agreed representation has been completed and, if so, sending a closing letter to the client clearly stating that the representation is over. If the objectives have not been reached, the lawyer should assess the case to determine if more work should be done or if the lawyer needs to talk with the client so a decision can be made to continue the representation or to withdraw from the representation. See the file closing checklist, above.

Before storing the file, consideration should be given to other dispositions, such as giving the file to the client after copying any documents the lawyer might need in the future. Beside the fact that most, if not all, the file belongs to the client absent an agreement with the client to the contrary, the lawyer will be complying with the ethical duty to return

client property at the conclusion of the representation. The lawyer also avoids the expense of storage, the continuing risks of storage and the future difficulty of deciding when and how to destroy the file. Keep in mind that it may be difficult to locate a client after a number of years have passed.

If the lawyer chooses to store the client files, the end of the representation is the time to cull the file of duplicate or otherwise unnecessary materials. Closed files are also stored in secure cabinets or in covered boxes. The storage can be offsite or onsite. **Have a cross-index of each file and how to find it. This is particularly important for researching parties for conflicts of interest.**

DESTRUCTION PROTOCOL

We suggest that the client files, particularly original wills, be returned to that client after the conclusion of representation. In Washington, wills may be filed with the local court of jurisdiction. Larger volumes of material may require a different answer. However, today lawyers face the end result of boxes upon boxes of uncultured files that have become a burden both psychologically and financially.

With the client's written consent, shredding can be arranged for the appropriate files after the lawyer has culled the files of original documents or other materials of value to the client or to the lawyer. Destruction of files without client authority always includes some degree of risk. Remember to keep a permanent file that describes the file, disposition, receipts, releases and date with any other papers the lawyer decides are prudent to keep. Use an index system to help locate the files in the future. **The state of Washington imposes other requirements concerning personal information in the custody of the lawyer. See RCW Chapter 19.215 Disposal of Personal Information.**

THE FILES MAY BE IMMORTAL BUT WE ARE NOT

In some instances, a lawyer may be unable to wind up the law practice. Consider arranging in writing for a named attorney to back up the practice in the event of your disability or death. Such back up is crucially important for the solo practitioner. Include a protocol for handling your open and stored files. Ensure that the file system is described, orderly, and current. **If all of your client files contain only copies of documents, describe this fact in a prominent fashion.** LOMAP offers information and checklists to assist with the planning for your disability or death. See also <http://www.wsba.org/lawyers/planningahead.htm>

IV. Table of Dates for File Retention

RPC 1.15B requires that trust account records and related documents be retained for seven (7) years. The following table suggests periods for retaining the client files that pertain to certain practice areas. The table is a suggested standard. **Lawyers are free to choose a longer or shorter term of retention of client files.** Maintain a permanent record that describes the file and the disposition of the file. Include in the permanent record any releases and receipts for files that are no longer under your control.

Special considerations, such as long-term client relationships, may require longer retention of client files. For example, those files may contain information that is useful for other matters for that client such as in immigration matters and land use matters, among others.

PRACTICE SPECIALTY	GUIDELINES
Probate Claims & Estates	Excluding tax, 10 years after final judgment; tax basis information – permanently
Tort Claims (Plaintiff)	7 years after final judgment or dismissal, except when minor involved; then when minor attains majority plus three years
Tort Claims (Defense)	7 years after final judgment or dismissal.
Contract Action	7 years after satisfaction of judgment, dismissal, or settlement.
Bankruptcy Claims & Filings	7 years after discharge of debtor, payment of claim, or discharge of trustee or receiver
Dissolution	7 years after entry of final judgment or dismissal of action, or date at which settlement agreement is no longer effective, except when minor children are involved and then at the young attaining majority plus three years
Real Estate Transactions	Subject to guidelines and tax needs; otherwise 7 years after settlement date, judgment, termination of sale, foreclosure, or other completion of matter; Retain surveys and legal descriptions not of record
Leases	7 years after termination of lease
Original Wills	Return to client after signing and conclusion of matter or file with local court of proper jurisdiction
Criminal Cases	7 years after date of acquittal or length of incarceration

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DECLARATION OF SERVICE AND FILING
GR 3.1

Mr. Weston G. Miller, on today's date deposited the accompanying:
STATEMENT OF ADDITIONAL GROUNDS, or a copy thereof, in the internal legal
mailing system of Airway Heights Corrections Center and made arrangements for
postage addressed to the following:

Derek M. Byrne; Court Clerk
Court of Appeals, Division Two
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Sara I. Beigh; Senior Deputy Prosecutor
Lewis County Prosecutors Office
345 W. Main Street, Floor 2
Chehalis, WA 98532-4802

I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED at AHCC in Airway Heights, Washington, on November 26, 2019.



Weston G. Miller; pro se; DOC# 366767
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001-2049

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